

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1645 of 1995

TO

FIRST APPEAL NO. 1657 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

THAKARDA PRADHANJI RADHUJIA DIED PENDENTE LITE, HIS HEIRS, 17

Appearance:

MR MR ANAND, GP with AJ DESAI, AGP for Appellants
MR.B.G.PATEL, for Respondent Nos. 1 to 3

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE
Date of decision: 22/07/96

COMMON ORAL JUDGEMENT : [Per : N.J.Pandya, J]

Admit. With the consent of the parties, this group of First Appeals is taken up for final hearing.

So far as the market value is concerned, we will

not interfere with the finding of the learned Reference Court Judge i.e. District Judge, Sabarkantha at Himmatnagar. On earlier occasion, while dealing with FA No. 5528/95 in respect of same project namely Dharoi Dam, the appeal was dismissed summarily.

However, the appellant State does have a case with regard to the finding of the learned Judge as to granting of compensation for well in respect of three claimants before her. Accordingly, an amount of Rs.5000/ awarded in respect of L.R. Case Nos. 1420/89, 1422/89 and 1426/89, the plea of the appellant is accepted and amount awarded by the trial court is set aside.

Likewise, in para 22 of the judgment, we find separate value of tree have been given. After recording the fact that the claimants were permitted to cut and cart away the wood of the tree by the Land Acq. Officer himself, in our opinion, there was no scope for learned Judge to award separate value for each tree as assessed by her at Rs. 300/. In respect of that, appeals are accepted and award of the trial court shall stand modified in respect of those claimants before us where separate value for trees has been given.

Arguably, it can be said that for removal of standing crop or trees, expenses can be awarded, but grant of expenses is one thing and evaluating the tree is another. For expenses, the case has to be pleaded and proved. That does not seem to have been done and instead, the value of the tree has been claimed and granted. That is not admissible under sec.23 of the Act.

The appeal accordingly stands partly allowed. The amount granted by the trial court for well in respect of aforesaid three reference cases is hereby set aside. Likewise, the amount in respect of each tree granted by the trial court to the respective claimants is also hereby set aside. Rest of the award remains as it is.

Appeals are partly allowed to the aforesaid extent. No order as to costs. Appellants are directed to deposit the award amount with proportionate costs, interest etc. etc. within six weeks from today.

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